


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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES
BY  401

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8
9 UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA
11 WESTERN DIVISION

12 KHALED AL HASSEN

13 Plaintiff,

14 v.

15 SHEIKH KALIFA BIN ZAYED AL NAHYAN,
16 an individual; SHEIKH MOHAMED BIN
17 ZAYED AL NAHYAN, an individual;
18 GENERAL SAEED HILAL ABDULLAH AL
DARMAKI, an individual; and DOES 1 to 10,
inclusive,

19 Defendants.¹

Case Number:
2:09-CV-1106-DMG
(FMOx)

Suggestion of Immunity

Monday, July 26, 2010

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26 ¹The United States is not a party to this action but seeks to file this
27 Suggestion of Immunity in order to suggest to the Court the immunity of
28 defendant His Highness Sheikh Khalifa Bin Zayed Al Nahyan, the President and
sitting head of state of the United Arab Emirates.

SUGGESTION OF IMMUNITY
SUBMITTED BY THE UNITED STATES OF AMERICA

At the direction of the Attorney General of the United States, pursuant to 28 U.S.C. § 517,¹ the undersigned attorney of the United States Department of Justice, respectfully informs this Honorable Court of the interest of the United States in the pending lawsuit against His Highness Sheikh Khalifa Bin Zayed Al Nahyan ("Sheikh Khalifa"), the President and sitting head of state of the United Arab Emirates ("UAE"), and suggests to the Court the immunity of Sheikh Khalifa. In support of its interest and suggestion, the United States sets forth as follows:

1. This action, involving allegations against three high ranking officials of the United Arab Emirates, has important foreign policy implications for the United States. The United States has a particular interest in this action against Sheikh Khalifa insofar as the case involves the question of immunity from the Court's jurisdiction of a foreign head of state. The Executive Branch of the Government of the United States, in the implementation of its foreign policy and in the conduct of its international relations, has determined that permitting this action to proceed against Sheikh Khalifa as a head of state would be incompatible with the United States' foreign policy interests. As discussed below, this determination should be given binding effect by this Court.

2. The Legal Adviser of the United States Department of State has informed the Department of Justice that the UAE has formally requested the

¹ 28 U.S.C. § 517 provides that "any officer of the Department of Justice[] may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States. . . ."

1 Government of the United States to suggest the immunity of Sheikh Khalifa from
2 this lawsuit. The Legal Adviser has further informed the Department of Justice
3 that the "Department of State recognizes and allows the immunity of Sheikh
4 Khalifa from this suit." Letter from Harold Hongju Koh to Tony West (copy
5 attached as Exhibit 1).

6 3. Under rules of customary international law recognized and applied
7 in the United States as a matter of common law, Sheikh Khalifa is immune from
8 the Court's jurisdiction in this case. Such head of state immunity decisions are
9 made by the Executive Branch, incident to the Executive Branch's authority in
10 the field of foreign affairs.²

11 4. When the Executive Branch has determined that an individual is
12 entitled to head of state immunity, the courts have routinely accepted that
13 determination as dispositive of the issue. *See, e.g., Ye v. Jiang Zemin*, 383 F.3d
14 620, 625 (7th Cir. 2004) ("The obligation of the Judicial Branch is clear—a
15 determination by the Executive Branch that a foreign head of state is immune
16 from suit is conclusive and a court must accept such a determination without
17 reference to the underlying claims of a plaintiff."); *Saltany v. Reagan*, 702 F.
18 Supp. 319, 320 (D.D.C. 1988) (suggestion of Prime Minister Thatcher's
19 immunity conclusive in dismissing suit that alleged British complicity in U.S. air
20

21 ²In *Samantar v. Yousuf*, 130 S. Ct. 2278 (2010), the Supreme Court made it
22 clear that the FSIA does not codify the rules governing the immunity of any
23 individual foreign government officials, including heads of state. *See also Ye v.*
24 *Jiang Zemin*, 383 F.3d 620, 625 (7th Cir. 2004) ("The FSIA does not . . . address
25 the immunity of foreign heads of states. The FSIA refers to foreign states, not
26 their leaders."); *First American Corp. v. Al-Nahyan*, 948 F. Supp. 1107, 1119
27 (D.D.C. 1996) ("[T]he enactment of the FSIA was not intended to affect the power
28 of the State Department, on behalf of the President as Chief Executive, to assert
immunity for heads of state or for diplomatic and consular personnel.").

1 strikes against Libya), *aff'd in part and rev'd in part on other grounds*, 886 F.2d
2 438 (D.C. Cir. 1989); *Spacil v. Crowe*, 489 F.2d 614, 617 (5th Cir. 1974)
3 (“[O]nce the State Department has concluded that immunity is warranted, and
4 has submitted that ruling to the court through a suggestion, the matter is for
5 diplomatic rather than judicial resolution.”); *John Doe I v. State of Israel*, 400 F.
6 Supp. 2d 86, 110 (D.D.C. 2005) (“When the Executive Branch concludes that a
7 recognized leader of a foreign sovereign should be immune from the jurisdiction
8 of American courts, that conclusion is determinative.”); *First American Corp. v.*
9 *Al-Nahyan*, 948 F. Supp. 1107, 1119 (D.D.C. 1996) (“The United States has filed
10 a Suggestion of Immunity on behalf of H.H. Sheikh Zayed, and courts of the
11 United States are bound to accept such head of state determinations as
12 conclusive.”); *Alicog v. Kingdom of Saudi Arabia*, 860 F. Supp. 379, 382 (S.D.
13 Tex. 1994) (suggestion by Executive Branch of King Fahd’s immunity as head of
14 state of Saudi Arabia held to require dismissal of complaint against King Fahd
15 for false imprisonment and abuse), *aff'd*, 79 F.3d 1145 (5th Cir. 1996);
16 *Leutwyler v. Queen Rania Al-Abdullah*, 184 F. Supp. 2d 277, 280 (S.D.N.Y.
17 2001) (Executive Branch’s Suggestion of Immunity on behalf of Queen of
18 Jordan “is entitled to conclusive deference from the courts”); *cf.*, *Republic of*
19 *Mexico v. Hoffman*, 324 U.S. 30, 35-36 (1945); *Ex parte Peru*, 318 U.S. 578,
20 588-89 (1943).

21 5. The United States has previously suggested the immunity of Sheikh
22 Khalifa’s predecessor as the President of the UAE, Sheikh Zayed. *First*
23 *American Corp.*, 948 F. Supp. at 1119. In that case, the district court held that
24 the plaintiffs were “barred from asserting claims against H.H. Sheikh Zayed, the
25 sitting head of state of the United Arab Emirates, because he is entitled to
26 immunity from the Court’s jurisdiction.” *Id.* (citing *Ex Parte Peru*, 318 U.S. at
27
28

1 588-89). The District Court accepted the United States' Suggestion of Immunity
2 as determinative, noting that "[t]he United States has filed a Suggestion of
3 Immunity on behalf of H.H. Sheikh Zayed, and courts of the United States are
4 bound to accept such head of state determinations as conclusive." *Id.*

5 6. Judicial deference to the Executive Branch's suggestions of
6 immunity is predicated on compelling considerations arising out of the Executive
7 Branch's authority to conduct foreign affairs under the Constitution. *See Ye*, 383
8 F.3d at 626 (citing *Spacil*, 489 F.2d at 618). Judicial Branch deference to the
9 Executive Branch in these matters, the circuit court noted, is "motivated by the
10 caution we believe appropriate of the Judicial Branch when the conduct of
11 foreign affairs is involved." *Id.* *See also Ex parte Peru*, 318 U.S. at 588. And
12 as other courts have explained, the Executive Branch possesses substantial
13 institutional resources to pursue and extensive experience to conduct the
14 country's foreign affairs. *See, e.g., Spacil*, 489 F.2d at 619; *United States v.*
15 *Truong Dinh Hung*, 629 F.2d 908, 913-14 (4th Cir. 1980). By comparison, "the
16 judiciary is particularly ill-equipped to second-guess" the Executive Branch's
17 determinations affecting the country's interests. *See Spacil*, 489 F.2d. at 619.
18 Finally, and "[p]erhaps most importantly, in the chess game that is diplomacy
19 only the executive has a view of the entire board and an understanding of the
20 relationship between isolated moves." *Id.*

CONCLUSION

For the foregoing reasons, the United States respectfully suggests the immunity of Sheikh Khalifa in this action.

Dated: July 26, 2010

Respectfully submitted,

/s/ Eric J. Beane

ERIC J. BEANE

Trial Attorney, Department of Justice
Civil Division— Federal Programs Branch
20 Massachusetts Ave., N.W., Rm. 7124
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THE LEGAL ADVISER
DEPARTMENT OF STATE
WASHINGTON

July 22, 2010

Hon. Tony West
Assistant Attorney General
Civil Division
U.S. Department of Justice
Washington, D.C. 20530

Re: *Khaled Al Hassen v. Sheikh Khalifa Bin Zayed Al Nahyan et al.*,
Civil Action No. CV 09-1106-DMG (FMOX) (C.D. Cal.)

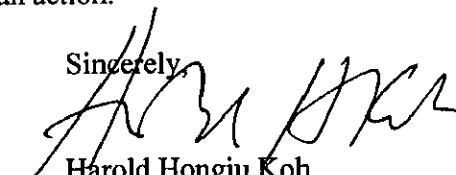
Dear Mr. West:

The above-captioned suit names His Highness Sheikh Khalifa Bin Zayed Al Nahyan as a defendant. Sheikh Khalifa is the President and sitting head of state of the United Arab Emirates (UAE) and, in light of his status, the Government of the UAE has formally asked the Department of State to take the steps necessary to have this action against the Sheikh dismissed on the basis of his immunity from U.S. jurisdiction as a foreign head of state.

The Department of State recognizes and allows the immunity of Sheikh Khalifa from this suit. Under the rules of customary international law, recognized and applied in the United States, Sheikh Khalifa, as the sitting head of state of a foreign state, is immune from the jurisdiction of the United States courts. Accordingly, the Department of State requests that the Department of Justice submit an appropriate Suggestion of Immunity to the district court at the earliest opportunity.

This letter recognizes the particular importance attached by the United States to obtaining the prompt dismissal of the proceedings against Sheikh Khalifa in view of the significant foreign policy implications of such an action.

Sincerely,



Harold Hongju Koh
The Legal Adviser

cc: Vincent Garvey
Federal Programs Branch, U.S. Department of Justice

PROOF OF SERVICE BY MAILING

I am over the age of 18 and not a party to the within action. I am employed by the Office of United States Attorney, Central District of California. My business address is 300 North Los Angeles Street, Suite 7516, Los Angeles, California 90012.

On July 26, 2010, I served **SUGGESTION OF IMMUNITY** on each person or entity named below by enclosing a copy in an envelope addressed as shown below and placing the envelope for collection and mailing on the date and at the place shown below following our ordinary office practices. I am readily familiar with the practice of this office for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

Date of mailing: July 26, 2010. Place of mailing: Los Angeles, California.

Person(s) and/or Entity(ies) to Whom mailed:

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Khaled Al Hassen

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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendants

Sheikh Kahlifa Bin Zayed Al Nahyan

an individual (and all other defendants)

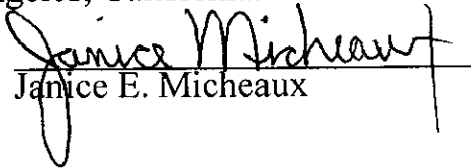
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ATTORNEY TO BE NOTICED

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on: July 26, 2010 at Los Angeles, California.


Janice E. Micheaux